

AMENDED IN ASSEMBLY APRIL 20, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2706

**Introduced by Assembly Member Bonnie Lowenthal
(Coauthor: Assembly Member Hall)**

February 19, 2010

An act to amend Section 51.7 of the Civil Code, and to amend Sections 12930, 12948, 12960, 12965, and 12970 of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2706, as amended, Bonnie Lowenthal. Civil rights: homeless persons.

Existing law sets forth various personal rights and provides that all persons within California have the right to be free from violence, or intimidation by the threat of violence, because of, among other characteristics, their race, color, religion, ancestry, national origin, political affiliation, or sex. Existing law further permits an individual whose exercise or enjoyment of specified personal rights have been interfered with to bring a civil action for damages, including actual damages, exemplary damages, attorney's fees, injunctive relief, and other appropriate relief.

This bill would specify that homeless persons, as defined, are entitled to the rights set forth under existing law, and would provide that a homeless person has the right to be free from violence or intimidation by threat of violence directed against that person on the basis of that person's status as a homeless person. *The bill would also provide that these provisions shall not be construed to enlarge or diminish an existing duty, if any, by an owner of residential rental property to protect a*

homeless person who is present on the property from violence or intimidation by threats of violence.

This bill would provide that the Department of Fair Employment and Housing does not have jurisdiction or enforcement powers over the protections specified in this bill.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51.7 of the Civil Code is amended to
2 read:

3 51.7. (a) All persons within the jurisdiction of this state have
4 the right to be free from any violence, or intimidation by threat of
5 violence, committed against their persons or property because of
6 political affiliation, or on account of any characteristic listed or
7 defined in subdivision (b) or (e) of Section 51, or position in a
8 labor dispute, or because another person perceives them to have
9 one or more of those characteristics. The identification in this
10 subdivision of particular bases of discrimination is illustrative
11 rather than restrictive.

12 (b) (1) This section includes any violence, or intimidation by
13 threat of violence, committed against a person or property *of a*
14 *homeless person* because the person is, or is perceived to be, *a*
15 *homeless person*. ~~For~~

16 (2) For purposes of this section, “homeless person” means:

17 ~~(1)~~

18 (A) A person who does not have a fixed, regular, and adequate
19 nighttime residence.

20 ~~(2)~~

21 (B) A person that has a nighttime residence that constitutes any
22 of the following:

23 ~~(A)~~

24 (i) A supervised, publicly or privately operated shelter
25 designated to provide temporary living accommodations, including,
26 but not limited to, welfare hotels, congregate shelters, and
27 transitional housing.

28 ~~(B)~~

29 (ii) An institution that provides a temporary residence for
30 individuals intended to be institutionalized.

1 ~~(C)~~

2 (iii) A public or private building or designated area that is not
3 ordinarily designed for, or ordinarily used for, sleeping
4 accommodations for persons.

5 (3) *This subdivision shall not be construed to enlarge or*
6 *diminish an existing legal duty, if any, by an owner of residential*
7 *rental property to protect a homeless person from violence, or*
8 *intimidation by threats of violence, because the homeless person*
9 *is physically present on the owner's property or other property*
10 *controlled by the owner incidental to ownership of the rental*
11 *property.*

12 (c) This section does not apply to statements concerning
13 positions in a labor dispute which are made during otherwise lawful
14 labor picketing.

15 SEC. 2. Section 12930 of the Government Code is amended
16 to read:

17 12930. The department shall have the following functions,
18 powers, and duties:

19 (a) To establish and maintain a principal office and any other
20 offices within the state as are necessary to carry out the purposes
21 of this part.

22 (b) To meet and function at any place within the state.

23 (c) To appoint attorneys, investigators, conciliators, and other
24 employees as it may deem necessary, fix their compensation within
25 the limitations provided by law, and prescribe their duties.

26 (d) To obtain upon request and utilize the services of all
27 governmental departments and agencies and, in addition, with
28 respect to housing discrimination, of conciliation councils.

29 (e) To adopt, promulgate, amend, and rescind suitable rules and
30 regulations to carry out the functions and duties of the department
31 pursuant to this part.

32 (f) (1) To receive, investigate, and conciliate complaints
33 alleging practices made unlawful pursuant to Chapter 6
34 (commencing with Section 12940).

35 (2) To receive, investigate, and conciliate complaints alleging
36 a violation of subdivision (a) of Section 51.7 or Section 51, 51.5,
37 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures
38 of this part shall be independent of any other remedy or procedure
39 that might apply.

(g) In connection with any matter under investigation or in question before the department pursuant to a complaint filed under Section 12960, 12961, or 12980:

(1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.

(2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.

(3) To issue written interrogatories.

(4) To request the production for inspection and copying of books, records, documents, and physical materials.

(5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.

(h) To issue accusations pursuant to Section 12965 or 12981 and to prosecute those accusations before the commission.

(i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, marital status, national origin, ancestry, familial status, disability, or sexual orientation.

(j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.

(k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.

SEC. 3. Section 12948 of the Government Code is amended to read:

12948. It is an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by subdivision (a) of Section 51.7 or Section 51, 51.5, 54, 54.1, or 54.2 of the Civil Code.

SEC. 4. Section 12960 of the Government Code is amended to read:

12960. (a) The provisions of this article govern the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

1 (b) Any person claiming to be aggrieved by an alleged unlawful
2 practice may file with the department a verified complaint, in
3 writing, that shall state the name and address of the person,
4 employer, labor organization, or employment agency alleged to
5 have committed the unlawful practice complained of, and that shall
6 set forth the particulars thereof and contain other information as
7 may be required by the department. The director or his or her
8 authorized representative may in like manner, on his or her own
9 motion, make, sign, and file a complaint.

10 (c) Any employer whose employees, or some of them, refuse
11 or threaten to refuse to cooperate with the provisions of this part
12 may file with the department a verified complaint asking for
13 assistance by conciliation or other remedial action.

14 (d) No complaint may be filed after the expiration of one year
15 from the date upon which the alleged unlawful practice or refusal
16 to cooperate occurred, except that this period may be extended as
17 follows:

18 (1) For a period of time not to exceed 90 days following the
19 expiration of that year, if a person allegedly aggrieved by an
20 unlawful practice first obtained knowledge of the facts of the
21 alleged unlawful practice after the expiration of one year from the
22 date of their occurrence.

23 (2) For a period of time not to exceed one year following a
24 rebutted presumption of the identity of the person's employer under
25 Section 12928, in order to allow a person allegedly aggrieved by
26 an unlawful practice to make a substitute identification of the actual
27 employer.

28 (3) For a period of time, not to exceed one year from the date
29 the person aggrieved by an alleged violation of subdivision (a) of
30 Section 51.7 of the Civil Code becomes aware of the identity of a
31 person liable for the alleged violation, but in no case exceeding
32 three years from the date of the alleged violation if during that
33 period the aggrieved person is unaware of the identity of any person
34 liable for the alleged violation.

35 (4) For a period of time not to exceed one year from the date
36 that a person allegedly aggrieved by an unlawful practice attains
37 the age of majority.

38 SEC. 5. Section 12965 of the Government Code is amended
39 to read:

1 12965. (a) In the case of failure to eliminate an unlawful
2 practice under this part through conference, conciliation, or
3 persuasion, or in advance thereof if circumstances warrant, the
4 director in his or her discretion may cause to be issued in the name
5 of the department a written accusation. The accusation shall contain
6 the name of the person, employer, labor organization, or
7 employment agency accused, which shall be known as the
8 respondent, shall set forth the nature of the charges, shall be served
9 upon the respondent together with a copy of the verified complaint,
10 as amended, and shall require the respondent to answer the charges
11 at a hearing.

12 For any complaint treated by the director as a group or class
13 complaint for purposes of investigation, conciliation, and
14 accusation pursuant to Section 12961, an accusation shall be issued,
15 if at all, within two years after the filing of the complaint. For any
16 complaint alleging a violation of subdivision (a) of Section 51.7
17 of the Civil Code, an accusation shall be issued, if at all, within
18 two years after the filing of the complaint. For all other complaints,
19 an accusation shall be issued, if at all, within one year after the
20 filing of a complaint. If the director determines, pursuant to Section
21 12961, that a complaint investigated as a group or class complaint
22 under Section 12961 is to be treated as a group or class complaint
23 for purposes of conciliation and accusation as well, that
24 determination shall be made and shall be communicated in writing
25 within one year after the filing of the complaint to each person,
26 employer, labor organization, employment agency, or public entity
27 alleged in the complaint to have committed an unlawful practice.

28 (b) If an accusation is not issued within 150 days after the filing
29 of a complaint, or if the department earlier determines that no
30 accusation will issue, the department shall promptly notify, in
31 writing, the person claiming to be aggrieved that the department
32 shall issue, on his or her request, the right-to-sue notice. This notice
33 shall indicate that the person claiming to be aggrieved may bring
34 a civil action under this part against the person, employer, labor
35 organization, or employment agency named in the verified
36 complaint within one year from the date of that notice. If the person
37 claiming to be aggrieved does not request a right-to-sue notice,
38 the department shall issue the notice upon completion of its
39 investigation, and not later than one year after the filing of the
40 complaint. A city, county, or district attorney in a location having

1 an enforcement unit established on or before March 1, 1991,
2 pursuant to a local ordinance enacted for the purpose of prosecuting
3 HIV/AIDS discrimination claims, acting on behalf of any person
4 claiming to be aggrieved due to HIV/AIDS discrimination, may
5 also bring a civil action under this part against the person,
6 employer, labor organization, or employment agency named in
7 the notice. The superior courts of the State of California shall have
8 jurisdiction of those actions, and the aggrieved person may file in
9 these courts. An action may be brought in any county in the state
10 in which the unlawful practice is alleged to have been committed,
11 in the county in which the records relevant to the practice are
12 maintained and administered, or in the county in which the
13 aggrieved person would have worked or would have had access
14 to the public accommodation but for the alleged unlawful practice,
15 but if the defendant is not found within any of these counties, an
16 action may be brought within the county of the defendant's
17 residence or principal office. A copy of any complaint filed
18 pursuant to this part shall be served on the principal offices of the
19 department and of the commission. The remedy for failure to send
20 a copy of a complaint is an order to do so. Those actions may not
21 be filed as class actions or may not be maintained as class actions
22 by the person or persons claiming to be aggrieved where those
23 persons have filed a civil class action in the federal courts alleging
24 a comparable claim of employment discrimination against the
25 same defendant or defendants. In actions brought under this section,
26 the court, in its discretion, may award to the prevailing party
27 reasonable attorney's fees and costs, including expert witness fees,
28 except where the action is filed by a public agency or a public
29 official, acting in an official capacity.

30 (c) (1) If an accusation includes a prayer either for damages
31 for emotional injuries as a component of actual damages, or for
32 administrative fines, or for both, or if an accusation is amended
33 for the purpose of adding a prayer either for damages for emotional
34 injuries as a component of actual damages, or for administrative
35 fines, or both, the respondent may within 30 days after service of
36 the accusation or amended accusation, elect to transfer the
37 proceedings to a court in lieu of a hearing pursuant to subdivision
38 (a) by serving a written notice to that effect on the department, the
39 commission, and the person claiming to be aggrieved. The

1 commission shall prescribe the form and manner of giving written
2 notice.

3 (2) No later than 30 days after the completion of service of the
4 notice of election pursuant to paragraph (1), the department shall
5 dismiss the accusation and shall, either itself or, at its election,
6 through the Attorney General, file in the appropriate court an action
7 in its own name on behalf of the person claiming to be aggrieved
8 as the real party in interest. In this action, the person claiming to
9 be aggrieved shall be the real party in interest and shall have the
10 right to participate as a party and be represented by his or her own
11 counsel. Complaints filed pursuant to this section shall be filed in
12 the superior court in any county in which unlawful practices are
13 alleged to have been committed, in the county in which records
14 relevant to the alleged unlawful practices are maintained and
15 administered, or in the county in which the person claiming to be
16 aggrieved would have worked or would have had access to public
17 accommodation, but for the alleged unlawful practices. If the
18 defendant is not found in any of these counties, the action may be
19 brought within the county of the defendant's residence or principal
20 office. Those actions shall be assigned to the court's delay
21 reduction program, or otherwise given priority for disposition by
22 the court in which the action is filed.

23 (3) A court may grant as relief in any action filed pursuant to
24 this subdivision any relief a court is empowered to grant in a civil
25 action brought pursuant to subdivision (b), in addition to any other
26 relief that, in the judgment of the court, will effectuate the purpose
27 of this part. This relief may include a requirement that the employer
28 conduct training for all employees, supervisors, and management
29 on the requirements of this part, the rights and remedies of those
30 who allege a violation of this part, and the employer's internal
31 grievance procedures.

32 (4) The department may amend an accusation to pray for either
33 damages for emotional injury or for administrative fines, or both,
34 provided that the amendment is made within 30 days of the
35 issuance of the original accusation.

36 (d) (1) Notwithstanding subdivision (b), the one-year statute
37 of limitations, commencing from the date of the right-to-sue notice
38 by the Department of Fair Employment and Housing, to the person
39 claiming to be aggrieved, shall be tolled when all of the following
40 requirements have been met:

1 (A) A charge of discrimination or harassment is timely filed
2 concurrently with the Equal Employment Opportunity Commission
3 and the Department of Fair Employment and Housing.

4 (B) The investigation of the charge is deferred by the
5 Department of Fair Employment and Housing to the Equal
6 Employment Opportunity Commission.

7 (C) A right-to-sue notice is issued to the person claiming to be
8 aggrieved upon deferral of the charge by the Department of Fair
9 Employment and Housing to the Equal Employment Opportunity
10 Commission.

11 (2) The time for commencing an action for which the statute of
12 limitations is tolled under paragraph (1) expires when the federal
13 right-to-sue period to commence a civil action expires, or one year
14 from the date of the right-to-sue notice by the Department of Fair
15 Employment and Housing, whichever is later.

16 (3) This subdivision is intended to codify the holding in *Downs*
17 *v. Department of Water and Power of City of Los Angeles* (1997)
18 58 Cal.App.4th 1093.

19 (e) (1) Notwithstanding subdivision (b), the one-year statute
20 of limitations, commencing from the date of the right-to-sue notice
21 by the Department of Fair Employment and Housing, to the person
22 claiming to be aggrieved, shall be tolled when all of the following
23 requirements have been met:

24 (A) A charge of discrimination or harassment is timely filed
25 concurrently with the Equal Employment Opportunity Commission
26 and the Department of Fair Employment and Housing.

27 (B) The investigation of the charge is deferred by the Equal
28 Employment Opportunity Commission to the Department of Fair
29 Employment and Housing.

30 (C) After investigation and determination by the Department
31 of Fair Employment and Housing, the Equal Employment
32 Opportunity Commission agrees to perform a substantial weight
33 review of the determination of the department or conducts its own
34 investigation of the claim filed by the aggrieved person.

35 (2) The time for commencing an action for which the statute of
36 limitations is tolled under paragraph (1) shall expire when the
37 federal right-to-sue period to commence a civil action expires, or
38 one year from the date of the right-to-sue notice by the Department
39 of Fair Employment and Housing, whichever is later.

SEC. 6. Section 12970 of the Government Code is amended to read:

12970. (a) If the commission finds that a respondent has engaged in any unlawful practice under this part, it shall state its findings of fact and determination and shall issue and cause to be served on the parties an order requiring the respondent to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

(1) The hiring, reinstatement, or upgrading of employees, with or without backpay.

(2) The admission or restoration to membership in any respondent labor organization.

(3) The payment of actual damages as may be available in civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for emotional injuries if the accusation or amended accusation prays for those damages. Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), one hundred fifty thousand dollars (\$150,000) per aggrieved person per respondent.

(4) Notwithstanding paragraph (3), the payment of actual damages up to one hundred fifty thousand dollars (\$150,000) assessed against a respondent for a violation of subdivision (a) of Section 51.7 of the Civil Code, as an unlawful practice under this part.

(5) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.

(6) A report to the commission as to the manner of compliance with the commission's order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the commission shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

(1) Physical and mental well-being.

- 1 (2) Personal integrity, dignity, and privacy.
- 2 (3) Ability to work, earn a living, and advance in his or her
- 3 career.
- 4 (4) Personal and professional reputation.
- 5 (5) Family relationships.
- 6 (6) Access to the job and ability to associate with peers and
- 7 coworkers.

8 The commission shall also consider the duration of the emotional
9 injury, and whether that injury was caused or exacerbated by an
10 aggrieved person's knowledge of a respondent's failure to respond
11 adequately to, or to correct, the discriminatory practice or by the
12 egregiousness of the discriminatory practice.

13 (c) In addition to the foregoing, in order to vindicate the
14 purposes and policies of this part, the commission may assess
15 against the respondent, if the accusation or amended accusation
16 so prays, an administrative fine per aggrieved person per
17 respondent, the amount of which shall be determined in accordance
18 with the combined amount limitation of paragraph (3) of
19 subdivision (a).

20 (d) In determining whether to assess an administrative fine
21 pursuant to this section, the commission shall find that the
22 respondent has been guilty of oppression, fraud, or malice,
23 expressed or implied, as required by Section 3294 of the Civil
24 Code. In determining the amount of fines, the commission shall
25 consider relevant evidence of, including, but not limited to, the
26 following:

- 27 (1) Willful, intentional, or purposeful conduct.
- 28 (2) Refusal to prevent or eliminate discrimination.
- 29 (3) Conscious disregard for the rights of employees.
- 30 (4) Commission of unlawful conduct.
- 31 (5) Intimidation or harassment.
- 32 (6) Conduct without just cause or excuse.
- 33 (7) Multiple violations of the Fair Employment and Housing
- 34 Act.

35 The moneys derived from an administrative fine assessed
36 pursuant to this subdivision shall be deposited in the General Fund.
37 No administrative fine shall be assessed against a public entity.
38 The commission shall have no authority to award punitive damages
39 as a remedy for a finding of employment discrimination.

1 (e) In addition to the foregoing, in order to vindicate the
2 purposes and policies of this part, the commission may assess
3 against the respondent if the accusation or amended accusation so
4 prays, a civil penalty of up to twenty-five thousand dollars
5 (\$25,000) to be awarded to a person denied any right provided for
6 by subdivision (a) of Section 51.7 of the Civil Code, as an unlawful
7 practice prohibited under this part.

8 (f) If the commission finds the respondent has engaged in an
9 unlawful practice under this part, and the respondent is licensed
10 or granted a privilege by an agency of the state to do business,
11 provide a service, or conduct activities, and the unlawful practice
12 is determined to have occurred in connection with the exercise of
13 that license or privilege, the commission shall provide the licensing
14 or privilege granting agency with a copy of its decision or order.

15 (g) If the commission finds that a respondent has not engaged
16 in an unlawful practice under this part, the commission shall state
17 its findings of fact and determination and issue and cause to be
18 served on the parties an order dismissing the accusation as to that
19 respondent.

20 (h) Any findings and determination made or any order issued
21 pursuant to this section shall be written and shall indicate the
22 identity of the members of the commission who participated
23 therein.

24 (i) Any order issued by the commission shall have printed on
25 its face references to the rights of appeal of any party to the
26 proceeding to whose position the order is adverse.

27 (j) If the commission finds that a respondent has engaged in an
28 unlawful practice under this part, and it appears that this practice
29 consisted of acts described in Section 243.4, 261, 262, 286, 288,
30 288a, or 289 of the Penal Code, the commission, with the consent
31 of the complainant, shall provide the local district attorney's office
32 with a copy of its decision and order.

33 (k) Notwithstanding Section 12960, if the commission finds
34 that a respondent has engaged in unlawful discrimination in
35 housing under Section 12948, the remedies afforded in Section
36 12987 or any other provision in this part pertaining to housing
37 discrimination, shall apply.